



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Houston Helicopters, Inc.

File: B-231122.2

Date: March 23, 1989

DIGEST

1. Protest of agency's nonresponsibility determination filed more than 10 days after protester knew of the determination is untimely.
2. Protest of allegedly restrictive solicitation provision filed after bid opening is untimely.

DECISION

Houston Helicopters, Inc., protests the determination that it is a nonresponsive prospective contractor, made by the Forest Service, U.S. Department of Agriculture, with respect to invitation for bids (IFB) No. 49-88-02 for helicopter services at four bases designated by the agency.

We dismiss the protest.

Houston was the low bidder on items two and three of the IFB, but the contracting officer rejected the bid as nonresponsive because Houston had failed to submit the make and model numbers of the helicopters offered. Houston protested to our Office and we sustained the protest, on the basis that the matter was one of responsibility not responsiveness. Houston Helicopters, Inc., B-231122, Aug. 15, 1988, 88-2 CPD ¶ 149. In our decision, we recommended that the Forest Service make award to Houston if Houston was found to be responsible and eligible for award.

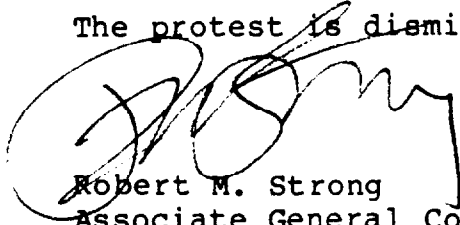
By letter dated January 31, 1989, confirming a telephone conversation of the day before, the Forest Service informed Houston that the agency would award Houston the contract for item three, but not for item two, because Houston could not obtain a pilot qualified to perform and instruct night flying using night vision goggles (NVGs). In its protest, filed February 27, Houston explains that it could not acquire the services of an NVG licensed pilot with the

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experience required by the solicitation. Houston argues that this requirement is unduly restrictive of competition because the use of NVGs are dangerous and because only one firm employs all the pilots that are NVG licensed.

Houston's protest is untimely for two reasons. First, under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988), a protest must be filed within 10 working days of the date the protester was aware or should have been aware of the basis for its protest. Since Houston was advised by the Forest Service on January 30 that it had been found nonresponsive, which was confirmed by the contracting officer's January 31 letter, its protest filed on February 27 is untimely. Second, our Regulations also provide that a protest based upon alleged improprieties in a solicitation that are apparent prior to bid opening must be filed before that time. 4 C.F.R. § 21.2(a)(1). Since Houston did not protest the requirement for NVG licensed pilots prior to bid opening, its protest of that alleged solicitation impropriety is untimely.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the typed name and title.

Robert M. Strong
Associate General Counsel